PB82-107871

Permit Fee Guideline

(U.S.) Environmental Protection Agency
Research Triangle Park, NC

Sep 81

U.S. Department of Commerce
National Technical Information Service
NTIS.

TECHNICAL REPORT DATA
(Please read Instructions on the reverse before completing)

1. REPORT NO.	2.	3. RECIPIENT'S ACCESSION NO.
EPA 450/2-81-003		PB82 107871

4. TITLE AND SUBTITLE	5. REPORT DATE
Permit Fee Guideline	April, 1981
	6. PERFORMING ORGANIZATION CODE U 268007
7. AUTHOR(S) Joseph Sableski, Dan deRoeck, Kevin Hannon, and Ray Freeman	8. PERFORMING ORGANIZATION REPORT NO.
9. PERFORMING ORGANIZATION NAME AND ADDRESS U.S. Environmental Protection Agency Office of Air Quality Planning and Standards Control Programs Development Division (MD 15) Research Triangle Park, N.C. 27711	10. PROGRAM ELEMENT NO.
	11. CONTRACT/GRANT NO.
12. SPONSORING AGENCY NAME AND ADDRESS See the above	13. TYPE OF REPORT AND PERIOD COVERED Final EPA/OAQPS Guideline
	14. SPONSORING AGENCY CODE

15. SUPPLEMENTARY NOTES

16. ABSTRACT

The guideline was developed to assist States in making revisions to their State Implementation Plans (SIPs) to address the permit fee requirements of the Clean Air Act. The guideline is designed for both agencies that have no functioning fee systems, and for those agencies currently revising and upgrading existing fee systems. The guideline includes a review of the Clean Air Act requirement for permit fees, legislative history and relevant court cases, costs to be considered, basic program implementation considerations, and examples of fee systems currently in effect around the country.

17. KEY WORDS AND DOCUMENT ANALYSIS

a. DESCRIPTORS	b. IDENTIFIERS/OPEN ENDED TERMS	c. COSATI Field/Group
Air Pollution Licenses Expenses Income	Air Pollution Control Equipment Permit Fees	13B

18. DISTRIBUTION STATEMENT	19. SECURITY CLASS (This Report)	21. NO. OF PAGES
Release unlimited	Unclassified	34
	20. SECURITY CLASS (This page) Unclassified	22. PRICE

EPA Form 2220-1 (Rev. 4-77) PREVIOUS EDITION IS OBSOLETE

PB82-107871

United States
Environmental Protection
Agency

Office of Air Quality
Planning and Standards
Research Triangle Park NC 27711

EPA-450/2-81-003
September 1981

Air

EPA

Permit Fee Guideline

REPRODUCED BY
NATIONAL TECHNICAL
INFORMATION SERVICE
U.S. DEPARTMENT OF COMMERCE
SPRINGFIELD, VA 22161

EPA-450/2-81-003

Permit Fee Guideline

Joseph Sableski, Dan deRoeck, Kevin Hannon,
and Ray Freeman

U.S. ENVIRONMENTAL PROTECTION AGENCY
Control Programs Development Division
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

September 1981

OAQPS GUIDELINE

The guideline is being issued by the Office of Air Quality Planning and Standards (OAQPS) to provide information to state and local air pollution control agencies. Reports published in this series will be available -- as supplies permit -- from the Library Services Office (MD-35), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; or, for a nominal fee, from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Publication No. EPA-450/2-81-003

PERMIT FEE GUIDELINE

TABLE OF CONTENTS

Chapter		Page
1.0	INTRODUCTION	1
2.0	LEGAL CONSIDERATIONS FOR PERMIT FEES	2
2.1	Requirement for Permit Fees	2
2.2	Legislative History	3
2.3	Relevant Court Cases	4
3.0	COSTS COVERED BY PERMIT FEES	6
3.1	Costs of Issuing and Implementing Permits	6
3.2	Costs of Determining Compliance	7
3.3	Costs of Court Action Excluded	7
4.0	IMPLEMENTATION OF A FEE SYSTEM	8
4.1	Types of Fees	8
4.1.1	Filing Fee	8
4.1.2	Construction Permit Fee	9
4.1.3	Annual Operating Fee	9
4.2	Assessment of Fees	10
4.3	Periodic Review and Adjustment of Fees	11
4.4	Fee Collection	11
4.5	Source Exemptions	12
APPENDIX I	- NATIONAL STATUS OF PERMIT FEES	14
APPENDIX II	- EXAMPLES OF PERMIT FEE SYSTEMS	18
1.	Michigan	18
2.	Oregon	20
3.	Bay Area	21
4.	South Coast Air Quality Management District	22
5.	Allegheny County	26
REFERENCES		27

1.0 INTRODUCTION

With the enactment of the Clean Air Act Amendments on August 7, 1977, Congress set forth a requirement for States to collect fees for permits granted to major stationary sources. Under a separate provision of the Act, States have one year from the date of enactment of new or amended Act requirements to revise their implementation plans accordingly. Many States have not yet submitted the required revisions, in fact, approximately half of the States do not have a permit fee system.

The Environmental Protection Agency (EPA) has developed this guideline to assist States with the preparation of revisions to their State Implementation Plans (SIPs) which address the permit fee requirement. The guideline is especially designed for agencies that have no functioning fee system. However, agencies currently implementing fee systems may find the document useful for evaluating and upgrading their existing systems.

This guideline includes a review of the Clean Air Act requirement for permit fees; legislative history and relevant court cases; costs to be considered; basic program implementation considerations; and examples of fee systems currently in effect around the country.

2.0 LEGAL CONSIDERATIONS

This chapter reviews the Act requirement for permit fees as well as the legislative history which identifies the Congressional intent for the requirement. Also, relevant court cases which provide legal precedent for certain fee-related issues are presented. For more detailed information, particularly for past court decisions on fees, the reader should refer to the actual document which is referenced in each instance.

2.1 REQUIREMENT FOR PERMIT FEES

Under §110(a)(2)(K) of the Act States are required to include a permit fee system in their SIPs. To approve the SIPs with such provisions, the Administrator of EPA must determine that

> ...it [the SIP] requires the owner or operator of each major stationary source to pay the permitting authority as a condition of any permit required under this Act a fee sufficient to cover--
>
> > (i) the reasonable costs of reviewing and acting upon any application for such a permit, and
> >
> > (ii) if the owner or operator receives a permit for such source whether before or after the date of enactment of this subparagraph, the reasonable costs (incurred after such date of enactment) of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action).

Permits are required under Part C (Prevention of Significant Deterioration of Air Quality and Visibility Protection) and Part D (Plan

Requirements for Nonattainment Areas) of the Act. Also, a permit or equivalent program is required under Section 110(a)(2)(D) of the Act, pertaining to attainment and maintenance of national ambient air quality standards and for the location of new sources to which a standard of performance will apply. At a minimum, fees should be collected, for permits required under the Act, from major stationary sources as defined in Section 302(j) of the Act, and as further defined under Section 169(1) for prevention of significant deterioration, and Section 169A(g)(7) for visibility protection.

2.2 LEGISLATIVE HISTORY

Congress promulgated the provision for a permit fee system in response to a 1976 EPA report[2] which projected staff and funding as being inadequate to establish and enforce revised SIPs. The House Committee on Interstate and Foreign Commerce felt permit fees would assist States in carrying out the new programs detailed in the Act relating to new source review, prevention of significant deterioration, and visibility protection. Moreover, the Committee believed fees would assure that the costs of the permit program would be appropriately internalized in the operating costs of emitting sources. By assuring that all States implement permit fee requirements, the Committee intended to prevent new industry from playing one State off against another in siting decisions, and to create a marketplace incentive for industry to use non-polluting processes and production methods.[3] Although the Senate had no such measure in its version of the bill, the conference committee adopted the permit fee requirement.

2.3 RELEVANT COURT CASES

The Supreme Court ruled in Cox v. New Hampshire (1941)[4] for the constitutionality of agency fee collection and upheld the rights of local governments to adjust fees to reflect variations in the costs incurred. The Court found

> ...no constitutional ground for denying to local governments that flexibility of adjustment of fees...in the light of varying conditions...[5]

EPA interprets this decision to allow agencies to collect permit fees, and further allows permit fees to vary, based on different costs incurred in permitting different sources or the same type of source under different conditions.

A landmark decision concerning agency fee systems was handed down in National Cable TV Assn., Inc. v. United States (1974).[6] The Court ruled that the correct fee-determining criterion under the intent of the Independent Offices Appropriations Act of 1952 is not the value of "public policy or interest served...," but rather the "value to the recipient" of a benefit received.[7] The former, the Supreme Court said, would take an agency out of its normal role and put it "in search of revenue in the manner of an Appropriations Committee of the House."[8] The FCC should not charge CATV (Cable TV) operators the full cost of regulatory programs, which would include "protective services rendered to the public," but only the cost of services which "bestow a benefit on the applicant not shared by other members of society."[9] A sum in excess of this would be a tax, which only Congress may levy. The Court did not

strike down the fee, but remanded it to the FCC for recalculation. EPA interprets this to apply to permit fees required under the Act. Costs incurred by the agency which do not result in a benefit to the permit applicant, or which accrue more benefit to society as a whole (such as general air quality monitoring costs), cannot be assessed to the source.

The House Interstate and Foreign Commerce Committee took National Cable into consideration and added the court cost exclusion clause presumably to bring the section in line with the Court's ruling. The House Committee also pointed out that setting a national fee requirement is a proper exercise of Congressional Commerce power to guarantee that a State with a fee system will not be penalized by industry locating preferentially in a non-fee State.[10]

3.0 COSTS COVERED BY PERMIT FEES

The Act directs permitting authorities to charge fees sufficient to cover costs of (1) reviewing and acting upon permit applications and (2) implementing the terms and conditions of a permit once it is granted. Considering the Act, its court cost exclusion clause, and the case of National Cable v. United States, EPA feels that any cost which can be linked to a "benefit bestowed on the applicant,"[11] (such as the privilege of constructing or operating a source which emits air pollutants) may be charged to the permittee within the structure of a fee system. Thus, EPA believes that States may pass on to sources the following costs associated with evaluating permit applications and verifying compliance with the terms of approved permits.

3.1 COSTS OF ISSUING AND IMPLEMENTING PERMITS

The costs to the permitting authority related to issuing permits, implementing their terms, and regularly renewing them may be charged to the permittee. These costs should include attributable percentages of--

- equipment (capital and operating costs)
- supplies
- overhead
- clerical and bookkeeping services
- administrative services
- engineering evaluations
- special purpose air quality monitoring and modeling (pertaining to the permittee's application)

3.2 COSTS OF DETERMINING COMPLIANCE

The costs associated with determining compliance with permit conditions should include the costs of an emissions testing program, including costs of --

- stack sampling
- laboratory analysis
- site inspections
- surveillance activities

3.3 COSTS OF COURT ACTION EXCLUDED

The Act specifically excludes "court costs or other costs associated with any enforcement action" from the scope of the permit fee. "Court costs" are normally understood to mean the fixed fees or charges required to be paid to the courts or some of their officers. In addition, other costs associated with litigating an enforcement action via the courts or by administrative hearing, such as the cost for presenting witnesses, cannot be assessed against the permittee except to the extent these costs are recoverable under court order or other provision of law.

4.0 IMPLEMENTATION OF A FEE SYSTEM

This chapter describes elements relating to the actual implementation of a fee system. Where appropriate, recommendations are made as to how States may design and implement their fee system. Appendix II reviews some of the permit fee systems currently in effect.

4.1 TYPES OF FEES

States may exercise considerable flexibility in selecting the types of fees they will use to recover permit-related expenses. Existing fee systems demonstrate a number of possibilities whose merits should be examined by agencies planning to initiate a new system. For example, the South Coast Air Quality Management District in California administers a six-part fee system, including a filing fee, construction fee, annual renewal fee, annual emissions fee, hearing board fee, and an analysis fee (for changes in a source's operating conditions). In contrast, the fee system for the Allegheny County Health Department in Pennsylvania includes only an installation (construction) permit fee and an operating permit fee.

EPA recommends that States consider at least the following types of fees to comply with the requirements of the Act:

4.1.1. Filing Fee

The filing fee should be a uniform, non-refundable fee designed to cover the clerical and administrative costs for receiving and processing the permit application. Typically, an application is logged in, checked for completeness, assigned an identification number, and placed in a folder to be accompanied by memoranda, correspondence and other information

pertaining to the application. All the costs associated with these activities should be taken into account when setting the filing fee.

4.1.2. Construction Permit Fee

The construction permit fee should cover the costs of administration as well as any technical evaluation which must be performed before a permit can be issued. This type of fee would apply to applications for new source construction or for major modification of an existing source. The technical evaluation must ensure that the applicant will comply with regulations for control equipment, emission limitations, and ambient air quality. The fee may also cover the cost of any impact analysis the agency may have to perform. This type of fee should also include the costs of issuing public notices or holding public hearings as well as any other administrative and clerical costs of issuing the permit.

4.1.3. Annual Operating Fee

The annual operating fee should cover the costs of ongoing permit-related activities occurring after the issuance of a construction permit. This type of fee should include the cost of verifying that the source complies with operating conditions in conjunction with the issuance of the initial permit to operate. Also, since States must determine that each source remains in compliance with applicable rules and regulations throughout its operating life, expenses for periodic source surveillance, onsite inspections, and emissions compliance tests should be recovered by the annual operating fee.

It should also be noted that this fee is to be imposed on any major stationary source subject to permits under the Act, even if the source received a construction permit before the enactment of subparagraph §110(a)(2)(ii) of the Act.

4.2 ASSESSMENT OF FEES

It is possible to assess fees either before or after the actual costs have been incurred. However, EPA recommends that agencies predetermine their fees and publish them so that the applicants may be advised of their permit costs in advance. This approach does have the disadvantage of being less accurate than a case-by-case fee assessment since fees are set on the basis of anticipated costs; however, setting fees in advance should minimize the administrative burden of the permit program. Also case-by-case assessments could lend themselves to the possibility of litigation concerning an agency's exercise of discretion in setting a unique fee for each permit.

The use of fee schedules is quite common. (Examples are included in Appendix II.) The fee schedule generally includes a graduated scale of fees based on the size and capacity of combustion equipment and industrial processes. The graduated fees published in fee schedules should be designed to reflect the agency's best estimates of the costs to process, review and issue permits, as well as the costs to implement and enforce the conditions of the permits. In light of the new permit requirements established under the Act, including PSD, visibility protection, and new source construction in nonattainment areas, the differing costs associated with carrying out the appropriate responsibilities under each set of requirements should also be considered in establishing a graduated scale of fees. However, many agencies having little or no experience with such reviews at the present time may choose to wait until adequate experience has been acquired before attempting such additional types of fee assessments.

4.3 PERIODIC REVIEW AND ADJUSTMENT OF FEES

There is a well established precedent for adjusting fees to reflect changing or differing costs. In Cox v. New Hampshire (1941),[12] the Supreme Court ruled in favor of allowing local governments the flexibility of adjusting fees to reflect the varying costs of regulating differing activities. Because of the complexities in assessing fees and the rising costs associated with the operation of permit programs, EPA recommends that each implementation plan include a procedure for the periodic review of fees, as well as a mechanism for adjusting fees on an annual basis. Adjustments should take into account the changes in costs that occur due to inflation and other factors that cause program expenditures to change. The Bay Area program, for instance, has the legal authority to make adjustments based on changes in the cost-of-living index without seeking additional authorization from the legislature. Such adjustments, carried out annually, would allow agencies to keep their income in step with inflation and would not necessitate such large changes as adjustments made over a longer period.

4.4 FEE COLLECTION

The Act states that fees are to be paid "as a condition of any permit required..." (emphasis added.) Thus, fees should be collected before a permit is issued or renewed. Failure to remit an annual fee in a timely manner may be considered a violation of the terms of the permit.

One benefit of the system which includes both a filing fee and a construction fee is that the filing fee can be required with the submittal of the application and can be made nonrefundable, while the construction

permit fee may be collected before the construction permit is issued, but only if such a permit is approved. Such a policy may ease any collection problems otherwise encountered.

Some agencies, such as the New York City agency, adjust renewal dates on operating certificates (permits) within a given facility so that all certificates expire on the same date. This allows the agency to make only one inspection per year whereas several inspections might have been otherwise required.

As permit fee systems are instituted, revenues of the State agencies may increase significantly. It is not EPA's intent to decrease grants to balance rising fee income. The Code of Federal Regulations in 40 CFR 30.620(c) defines fee revenue to be unrelated to grants. It states--

> (c) Revenue generated under the governing powers of a State or local government which may have been generated without grant support is not considered grant related income. Such revenues shall include fines or penalties levied under judicial or penal power and used as means to enforce laws; license or permit fees for the purpose of regulation, special assessment to abate nuisances and public irritations, inspection fees, and taxes.

4.5 SOURCE EXEMPTIONS

It is not unusual for existing fee systems to provide exemptions for governmental or other non-profit sources of air pollution. States should recognize, however, that the Act requires a permit fee to be assessed for each permit issued under the requirements of the Act. The only provision for exemption is contained in the PSD requirements of Part C, where nonprofit health or educational institutions are exempt from permit requirements if they are exempted by the State.

Sources which are under the jurisdiction of the Federal Government should be subject to the same permit fee regulations and assessments as non-governmental sources. This follows from Section 118 of the Act, which provides that:

Each department, agency, and instrumentality...of the Federal government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants...shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any non-governmental entity. The preceding sentence shall apply (A) to...any requirement respecting permits... .

APPENDIX I
NATIONAL STATUS OF PERMIT FEES

Contacts with EPA Regional Offices, States and local agencies in February, 1981, provided the following information on the national status of permit fees. A summary is presented in Figure 1.

1. Region I. Maine has a permit fees system in operation. New Hampshire has the authority to collect permit fees, but has no system. Vermont, Massachusetts, Connecticut, and Rhode Island do not have legislative authority to collect permit fees.

2. Region II. New York, New Jersey and Puerto Rico have operating permit fees systems. The Virgin Islands have no authority to collect permit fees. New Jersey collected approximately $85,000 in FY 1976, $183,000 in FY 1977, $220,000 in FY 1978, and $168,000 in FY 1979. Funds go directly to the agency. Fees may be adjusted administratively after a public hearing. Ninety percent of all sources are required to pay fees which have been 100% collectable.

3. Region III. The District of Columbia is in the process of developing a permit fees system. Virginia has the authority to collect permit fees, but has not developed a system. Neither West Virginia nor Maryland, have legal authority to collect permit fees. Pennsylvania has authority to collect fees, but a limit on the amount of fees does not permit the agency to recover its full permit program costs. Both the city of Philadelphia and Allegheny County operate permit fees systems.

4. Region IV. Florida collects a $20.00 filing fee. Alabama has authority to collect fees on permits to construct, but have not used this authority. Georgia, Tennessee, Kentucky, and North Carolina have

legislative authority to collect fees, but have not developed systems. Jefferson County in Kentucky, however, has a system operating under State authority. Mississippi and South Carolina have no authority to collect permit fees.

5. Region V. Michigan, Indiana, and Ohio have operating permit fee systems. Wisconsin, and Illinois are currently developing systems. The Illinois program was presented to the State's Budget Bureau in 1980. Wisconsin has only recently received legislative authority to collect permit fees and is studying fee systems now.

6. Region VI. Texas, New Mexico, and Louisiana have the authority to collect fees and are now developing systems. Louisiana has submitted a proposed system to EPA which is now being reviewed. Oklahoma will hold a public hearing in early 1981 regarding a request for authority to collect fees. Arkansas does not have the authority to collect fees; however, it has requested that authority from the legislature.

7. Region VII. Missouri has a new source filing fee and levies additional amounts for each emission point. Nebraska charges a minimal filing fee. Iowa and Kansas do not have authority to collect permit fees.

8. Region VIII. Colorado has an operating permit fee system; funds go to the State Health Department. North Dakota and Utah have permit fee systems; funds go directly to the North Dakota agency. Montana has legislative authority to collect fees, but has not developed a system. Wyoming does not have authority to collect permit fees. Utah and South Dakota both lack legislative authority; however, both plan to request authority in the future.

9. Region IX. Hawaii, California, Nevada, and Arizona operate permit fee systems. Arizona collects $70,000 annually which returns to the general fund. Counties also collect permit fees and many county programs operate exclusively on permit fee revenue.

10. Region X. Alaska and Idaho do not have operating permit fee systems. Washington is considering a permit fee system. Oregon collected $560,000 on 2000 permits during FY 1979-81, which was 50% of the State's compliance assurance budget. Printed invoices and computerization facilitate collection.

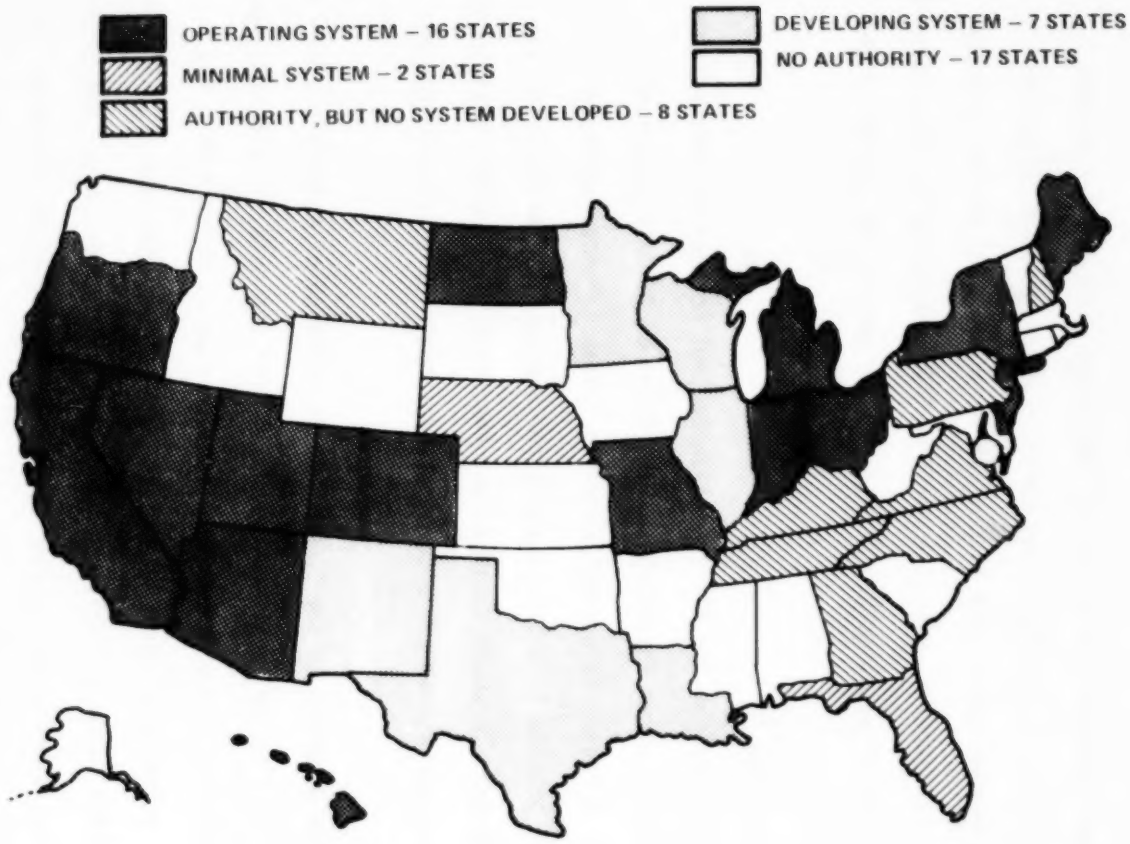
OPERATING SYSTEM – 16 STATES
MINIMAL SYSTEM – 2 STATES
AUTHORITY, BUT NO SYSTEM DEVELOPED – 8 STATES
DEVELOPING SYSTEM – 7 STATES
NO AUTHORITY – 17 STATES

Figure 1. National Status of Permit Fees Systems.

APPENDIX II

EXAMPLES OF PERMIT FEE SYSTEMS

EPA has compiled the following summaries of permit fee systems currently in use in two State and three local programs to illustrate the different systems being used to collect revenue. Each of the systems described has features which are worthy of consideration by those agencies in the process of establishing or modifying a permit fee system of their own.

1. Michigan[13]

Under State law, the Air Pollution Control Commission (hereafter the Commission) under the Michigan Department of Natural Resources administers a Statewide surveillance fee system. Funds generated by this system provide financial support for, among other activities, the permit program. To avoid duplication, the State law provides that local agencies may not assess any type of fee for their air pollution control activities.

The fee assessed by the Commission is composed of a uniform administrative fee of $25.00 plus an additional graduated fee set by a formula developed by the Commission. The formula can include factors related to: the nature and quantity of emissions, the number of emission sources, laboratory tests required, area surveillance, difficulty of survey setup, and other factors. The formula and related tables are presented in Figure 2. As shown, certain factors influencing the fee can be set by the Commission on a regional or a county basis, compensating for cost variations around the State.

MICHIGAN PERMIT FEE FORMULA

Annual Fee -- $25 + (N x I_c) + (P x R_r)

N = Numerical summary of the scheduled field investigations to be made at each location during the calendar year in which the surveillance fee is assessed based on the number of sources and the difficulty and frequency of investigation of each source.

$$N = \sum (n_1)^{0.8} \times d_1 \times f_1$$

n_1 - number of sources with the difficulty of investigation equal to d_1.

d_1 - numerical ratio of the difficulty of investigation of a specified source to the difficulty of investigation of a solid waste incinerator with capacity of 100-500 #/hr.

f_1 - number of times per year source is scheduled for investigation.

I_c - cost of investigation of a source of a 100-500 #/hr. solid waste incinerator.

P = Fee related to other surveillance activities ($100.00 x W) + ($30.00 x X) + ($15.00 x Y) + (0.10 x Z)

W = Annual emission of all pollutants in group W Table 5, (tons/year).

X = Annual emission of particulate matter (tons/year).

Y = Annual emission of sulfur dioxide (tons/year).

Z = Annual emission of all pollutants in group Z Table 5, (tons/year).

Rr = Correction factors to be established each year by the commission on a regional basis. There shall be a correction factor for each of the three surveillance fee regions as shown in Figure 2.* The exact value of each R will be established so that the total amount of fees assessed in the region shall not exceed the total amount of fees appropriated to state and local air pollution control agencies for conducting air pollution surveillance in that region. In no case shall the value of R exceed 2.0.

(2) The difficulty factor (d_1), the frequency of investigation factor (f_1) and the unit cost of investigation (I_c) shall be established by the commission by January 1 of each year. The d_1 and the f_1 factors may vary by county as may be established by the commission.

TABLE 5
Register of Materials

Group W
Asbestos
Benzo-a-pyrene
Beryllium or its compounds
Bromine
Chlorine
Cyanides
Fluorides
Fluorine
Iodine
Lead or its compounds
Mercaptans
Mercury or its compounds
Pesticides
Sulfides, organic or inorganic

Group X
Particulate (except those listed in Group W)

Group Y
Sulfur dioxide

Group Z
Oxides of Nitrogen
Carbon monoxide
Ammonia
Alcohols
Ethers
Esthers
Ketones
Halogenated hydrocarbons
Non-methane hydrocarbons

*Figure 2 of Michigan Administrative Rules not shown herein.

Figure 2. Michigan Permit Fee Formula [14]

A maximum fee of $8,000.00 per manufacturing location is set by statute. In 1979, the Commission collected 2.6 million dollars and processed 5,590 permits. The money collected from the surveillance fee program is deposited in the State's general fund. Legislative appropriations to the Commission have been growing by about $500,000.00 per year. Surveillance fees contribute an estimated 50% of the Commission's total program budget.

2. Oregon[15]

The Oregon Department of Environmental Quality administers a permit fee system composed of three parts. The first, a uniform, non-refundable filing fee of $50.00, is a clerical charge for both initial applications and renewals. An application processing fee is charged to cover the engineering and administrative evaluations required for initial permits over and above costs of compliance determination, dicussed below. The application processing fee is listed for major sources by four digit Standard Industrial Classification (SIC) Code and varies from $25.00-$1000.00.

An annual compliance determination fee, charged for both initial applications and renewals, defrays the cost of annually inspecting the source to determine its compliance with the terms and conditions of a permit. These fees are also listed by SIC Code and range from $85.00-$2520.00.

Using this system, Oregon collected $560,000 on 2000 permits during fiscal years 1979-81. This covered 50% of the State's compliance assurance budget. Fees go directly to the permitting agency but the legislature biennually sets budget requirements for the total fees assessed.

3. Bay Area[16]

The Bay Area Air Quality Management District Board is authorized by the California Legislature to administer the permit fee system for nine counties in the San Francisco Bay Area. Permits issued fall into two categories: (1) initial authorities to construct, and (2) renewable permits to operate.

A uniform, nonrefundable filing fee of $50.00 and a graduated initial permit fee are assessed to applicants for an authority to construct. The fees required for an authority to construct also cover the cost of issuing an initial permit to operate. Authority to construct fees range from $20.00 for a gasoline fueling nozzle up to $6000.00 for fuel burning equipment of 300 million BTU/hr or more. The initial permit fee scales divide sources into three groups: (1) fuel burning sources (any source, except flares, in which fuel is burned) based on fuel consumption in 1000 BTU's per hour; (2) stationary containers based on capacity in gallons; and (3) gasoline fueling nozzles based on a per nozzle fee.

Permits to operate are renewed each year and require an annual permit renewal fee. This fee, like the initial permit fee, is graduated and the fee schedules are similarly grouped. Annual permit renewal fees range from $10.00-$3500.00. To encourage prompt remittance, the Board has incorporated into the fee system a late fee surcharge. If fees are not received within sixty days of the scheduled date for permit renewal, a 50% surcharge is added to the annual permit renewal fee and the delinquent source is so informed. Thirty days later, if the proper fee has still not been received, the permit is voided and source operation is no

longer authorized. The permit is reissued only after a new application is presented and all late fees and penalties are paid.

The Board is empowered by statute to adjust the fee schedules to reflect changing costs of the permit program. It is authorized to make annual adjustments up to the change in the California Consumer Price Index without applying to the legislature for permission. This provision assures that current fees reflect current costs and conserves the effort needed to renegotiate fee schedules with the State legislature.

The District assesses fees for approximately 4000 permits, and that number is growing by about 400 new sources each year. The District plans soon to permit small sources emitting 2 1/2 tons per year or more of any controlled pollutant, thus broadening the source base for the system. Fees contribute to the costs of reviewing and acting on permits and to the costs of surveillance and enforcement. Revenue generated by permit fees totaled $870,000 in FY 1978 and $1,500,000 in FY 1979. The District estimates fee revenue will reach $2,800,000 this year.

4. South Coast Air Quality Management District[17]

The South Coast Air Quality Management District in California includes principally Los Angeles, Orange, Riverside, and San Bernadino Counties. The Executive Officer administers a six part fee system outlining schedules for:

- a filing fee;
- initial permit fees;
- annual renewal permit fees;
- annual permit fees based on emissions;

° hearing board fees for petitions for variance;

° analysis fees for changes in operating conditions.

Every applicant filing for a permit pays a non-refundable filing fee of $50.00. In addition to the filing fee, initial permit fees are assessed on all applications for permits. Each year after the initial permit is granted, permits must be renewed and renewal fees paid. Both initial permit fees and renewal fees are similarly set forth in six graduated fee schedules. Schedules are outlined for:

° incinerators by cross sectional area of combustion chamber;

° stationary containers by capacity in gallons;

° motors by horsepower;

° fuel burning equipment (except incinerators) by 1000 BTU's/hr.;

° electrical equipment (except motors) by kilovolt amperes.

Initial fees range from $20.00 for a gasoline fueling nozzle to $4000.00 for fuel burning equipment of 200 million BTU's per hour or more. Renewals range from $10.00 to $2000.00.

In addition to these fees, sources are charged annual fees based on emissions of five classes of air contaminants. For each ton in excess of 24 tons per year for any one of the contaminants listed, a fee is assessed as presented in Figure 3.

Hearing board fees are assessed on petitions for variance and include excess emissions fees.

Analysis fees are assessed for source tests required because of changes in operating conditions other than specified in the data for the authority to construct or permit to operate. A separate fee is charged for each contaminant and for each sampling station as shown in Figure 4.

Air Contaminant	Dollars Per Ton*
Total organic gases, except those compounds containing sulfur	$31.
Carbon monoxide	$ 0.26
Oxides of nitrogen (expressed as nitrogen dioxide)	$18.
Gaseous sulfur compounds (expressed as sulfur dioxide)	$21.
Particulate matter	$23.

* Dollars per ton in excess of 24 tons/year emitted.

Figure 3. South Coast Air Quality Management District Permit Fees Based on Emissions[18]

Contaminant	Basic Fee[a]	Surcharge for Each Additional Station
Organics	$350.00	$175.00
Particulates	395.00[b]	200.00
Oxides of Sulfur	320.00	175.00
Carbon Monoxide	195.00	115.00
Oxides of Nitrogen	325.00	190.00
Special (such as Hydrogen Chloride, Hydrogen Sulfide, etc.)	320.00	175.00

[a] Includes one sampling station. "Sampling station" means a designated place or location from which a sample is extracted for measurement or analysis.

[b] Add $100.00 for incinerator test.

Figure 4. South Coast Air Quality Management District Analysis Fees[19]

All fees assessed by the Executive Officer are subject to late fee surcharges if not remitted promptly. Fees 30 days late are charged an additional fifty percent. Permits for sources still delinquent after 30 additional days are voided and are not reissued until all accrued fees and penalties are paid and a new application is submitted.

Using this program, the district collected over 4 million dollars on 41,000 permits last year. Fees were doubled in 1978 with little reaction from sources.

5. Allegheny County[20]

Allegheny County, Pennsylvania, authorizes the County Health Department to administer a permit fee system. Installation permits and operating permits are assessed fees. Sources are classified in one of three categories:

- fuel burning equipment by BTU's per hour;
- process equipment by tons processed per hour;
- incinerators by horizontal cross sectional area.

Fees range from $12.00 for combustion equipment of 500,001 to 1 million BTU's per hour to $750.00 for 4 billion BTU's per hour or more for installation permits and from $12.00 to $1,750.00 for operating permits. Fees for process equipment range from $60.00 to $750.00 for installation and operating permit fees range from $50.00 to $1000.00 annually. Operating permits are annually renewed at the time fees are paid.

In 1979, the County collected $500,000 on 2500 renewed permits. In the same year, fees were raised 25% with few complaints from sources. Permit revenue represents 35 to 50 percent of the annual county budget.

REFERENCES

1. U.S. Congress, Clean Air Act, 42 U.S.C., 7401 et seq., August, 1979.

2. EPA. State Air Pollution Implementation Plan Progress Report, January 1 - June 30, 1976 (October 1976), p. 3.

3. U.S. House of Representatives Committee on Interstate and Foreign Commerce. Clean Air Act Amendments - Report Together with Additional, Separate, and Supplemental Views, Report No. 95-254, 95th Congress, 1st Session, U.S. Government Printing Office, Wash., D.C., May 12, 1977, p. 15.

4. Cox v. New Hampshire, 312 U.S. 567 (1941).

5. Ibid.

6. National Cable TV Association, Inc. v. United States, 414 U.S. 336 (1974).

7. Ibid., quoted from Independent Offices Appropriation Act of 1952, 31 U.S.C. Section 483(a).

8. Op cit., National Cable.

9. Ibid.

10. Op cit., U.S. House of Representatives, p. 219.

11. Op cit., National Cable.

12. Op cit., Cox v. New Hampshire.

13. Michigan Department of Natural Resources, Act 250 of 1965, as Amended, Act 348 of 1965, as Amended, and Administrative Rules for Air Pollution Control, Allied Printing, Lansing, Mich., January 1976.

14. Ibid., pp. 34, 35.

15. Oregon Department of Environmental Quality, Oregon Administrative Rules Chapter 340, January 1, 1976.

16. Bay Area Air Quality Management District, Proposed Amendments to Permit Fee Regulation 2, San Francisco, February 1979.

17. South Coast Air Quality Management District, Rules and Regulations, "Regulation III," El Monte, California, March 1980, pp. 1-12.

18. Ibid., p. 2.

19. Ibid., p. 11.

20. Allegheny County Health Department, Proposed Amendments to Allegheny County Ordinance 18 and Article XVIII Rules and Regulations of the Allegheny County Health Department, Pittsburgh, March 1980.

United States
Environmental Protection
Agency

Office of Air, Noise, and Radiation
Office of Air Quality Planning and Standards
Research Triangle Park NC 27711

Official Business
Penalty for Private Use
$300

Publication No. EPA-450/2-81-003

Postage and
Fees Paid
Environmental
Protection
Agency
EPA 335

If your address is incorrect, please change on the above label, tear off, and return to the above address.
If you do not desire to continue receiving this technical report series, CHECK HERE ☐, tear off label, and return it to the above address.

2241/5